

Nebraska State Legislature

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July 22, 2021

Jim Macy
Director of the Nebraska Department of Environment and Energy
245 Fallbrook Blvd
Lincoln, NE 68521

Director Macy,

I would like to thank you for your timely response to the letter I sent last month. I know your time is valuable and I'm appreciative. However, while I do appreciate your answers, I feel that there are still questions remaining that need to be answered. I know you are aware of the complexity of this issue, as well as its seriousness, and would agree that continued transparency is paramount.

An area of concern is the magnitude of times that AltEn was cited for violations, yet appeared to still be allowed to continue operating. In review, it appears that the company was given at least 13 notices of violation prior to the state filing an enforcement action, all of which provided some threat of further action.

The following warning was included in most of the notices: "These violations are being considered for further enforcement action, which may include issuance of an administrative order or referral to AG seeking penalties of up to \$10K per day for each violation." Why weren't enforcement actions sought earlier, since AltEn had clearly been warned that this was a potential consequence? Is this a common policy? If this is a common policy, what is the reasoning behind this?

- Nebraska law provides criminal penalties for intentional violations of the environmental laws. Due to the fact that AltEn had been warned of consequences and continued to violate the law, it appears that their violations were "knowing and intentional". Why hasn't the state filed criminal charges against the principals of AltEn for violations of these laws after being informed they were in violation?

- Many of the problems at AltEn got progressively worse over time. NDEE had the authority to seek an injunction to shut down its operations. What is the reasoning behind NDEE not taking this action when it appeared AltEn was making no progress and what appeared to be little effort to correct these problems?
- AltEn has received additional notices of violation since the lawsuit was filed against them in March of this year. What enforcement tools does NDEE currently have that ensures AltEn to comply when it comes to addressing ongoing violations?
- AltEn was previously ordered by NDEE to remove the wet cake within 30 days. Has this requirement been revised, if so, by what authority, and what is the new timeline for removal of the contamination?
- How many other facilities are operating in Nebraska while being repeatedly cited by NDEE for violations? What would you say is the policy that currently exists that allows this to happen that may need to be addressed by the Legislature?

There are several requests for information regarding enforcement of violations that I included in my first letter. After reviewing your response, I don't believe these requests were completely answered.

- Would you please provide me with the number of permits granted to AltEn, as well as how many of those permits have led to repeated violations and/or non-compliance issues?
- Is there a standard length of time or number of violations your agency is following before a violator is referred to the Attorney General's office and a suit is filed? It's my understanding that the standard length of time is usually months, not years. Can you please bring clarification to this concern?

Relative to any proposed action plans between your agencies and any agents or representatives regarding the growing number of Poseidon tanks at the plant site, are these tanks going to be covered at some point in the future to protect birds and insects from getting in and/or to keep the water contained?

- What amount of rainfall or wind gusts could cause the Poseidon tanks to overflow if they are at 85% capacity?
- How long will the Poseidon tanks full of contaminated water be held onsite, and is this site now officially permitted as a hazardous waste management facility?
- What is the lifespan of these Poseidon tanks when safely storing hazardous wastewater?

As I'm sure you're aware, enforcement and mitigation of the problem is just part of the work involved in this situation. As you turn your attention towards cleanup, I have several questions about how the State of Nebraska is dealing with those already affected and those who might be affected in the future.

Specifically, I have some grave concerns with one of the companies that has been chosen to help with this project. Clean Harbors was recently cited in Kimball, Nebraska for failure to properly manage hazardous waste. Was that taken into consideration when allowing them to be involved in Mead? Along those lines, what is being done in Kimball to examine the effects on the human population of their air pollution and incineration?

In Mead, is there a plan to clean the pesticides from the groundwater, such as with the Mead Ammunition plant superfund project? Or is your intent to just monitor for now?

- What is the status of approval of the engineered interim cleanup plan of the wastewater, with stamped drawings and specifications reviewed by Nebraska PE and PG?
- What is the status of NDEE approval of the interim engineered storage and disposal plan for the wet cake, with stamped drawings and specifications reviewed by Nebraska PE and PG?
- Does Biochar play a role in any part of the disposal plan of the wetcake?

I'm also very curious about whether the State of Nebraska has a plan or will formulate a plan regarding remediating and repairing the Keiser pond? Are we aware of any other areas of standing water that may have been affected by the AltEn environmental crisis?

Additionally, it seems to me as though further testing at and around the AltEn plant will be needed for the foreseeable future. In that vein, I do believe there was one other aspect of this I had asked about in my previous letter that I'm still not clear on. What testing must be done to verify chemical properties or other substances are being disposed of before, during or after disposition and where do these tests need to be filed? If you could provide a specific list, I would appreciate it as I have been unable to locate these in my own research.

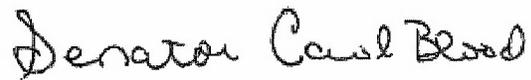
Lastly, when it comes to continued testing, Have soil samples been taken and tested at locations where the AltEn wet cake was either land applied or stockpiled? Have soil samples been taken and tested at locations where the AltEn wastewater was land applied?

I do understand that my letters are unusual, but I know you must agree that this situation continues to be both unusual and untenable. I am appreciative of your efforts in gathering the requested information in a timely fashion. With that said, I would like to be clear that I am also requesting that answers coming from one agency or another be in separate letters back to me. My hope is that this approach will make it easier to filter out what issue comes under the purview of what department. It is my hope and my official request that the four of us continue to work towards a solution to this problem. There are simply too many unanswered questions that still need resolution and the Nebraskans that live in that area deserve clear answers as to their exposure and any action plans to lift them up during this catastrophe.

I also want to reiterate that AltEn are the wrongdoers here and I want to make sure companies like it aren't able to take advantage of our great state. I continue to plan on having your agencies' backs in any future fight against a problem like what we're seeing in Mead, but I first need complete information in order to make sure Nebraska is well prepared to face that fight.

Please don't hesitate to reach out to my office with any questions regarding this request for information or anything else.

Respectfully,

A handwritten signature in cursive script that reads "Senator Carol Blood".

Senator Carol Blood
District 3

Cc: Tom Riley, Director of the Nebraska Department of Environmental Resources
Steve Wellman, Director of the Nebraska Department of Agriculture